

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Chapter 13
Bankruptcy Case No. 04-34927 - GFK

In Re:
Terrance Paul Chromey
Donna Mae Chromey

Debtor(s).

NOTICE OF HEARING AND OBJECTION TO CONFIRMATION
OF CHAPTER 13 PLAN AND MOTION TO DISMISS

TO: Debtors above-named and their attorney Robert J. Hoglund; Jasmine Z. Keller, Trustee; U.S. Trustee; all other entities specified in Local Rule 9013-3

1. Edwin A. Kanis and Nancy L. Kanis ("Movants") move the court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on this motion at 10:30 a.m., Thursday, October 28, 2004, in Courtroom No. 228B, United States Bankruptcy Court, at 316 N. Robert Street, St. Paul, MN 55101.

3. Any response to this motion must be filed and delivered no later than 10:30 a.m. on October 27, 2004, which is twenty-four (24) hours before the time set for hearing, or filed and served by mail no later than October 25, 2004, which is three (3) days before the time set for the hearing. UNLESS A RESPONSE OPPOSING THIS OBJECTION IS TIMELY FILED, THE COURT MAY GRANT THE RELIEF REQUESTED WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. Secs. 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This is a core proceeding.

The petition commencing this case was filed on April 28, 2003. This case is now pending in this Court.

5. This motion arises under 11 U.S.C. Sec. 1325. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9006-1, 9013-1 through 9013-3 and 9017-1. Movant hereby objects to confirmation of Debtors Chapter 13 Plan.

6. Movants are the holders of an unsecured claim in the amount of \$11,245.35, and thus are parties in interest. Movants object to confirmation of Debtors' Chapter 13 Plan for the following reasons:

- A. The Plan has not been proposed in good faith in violation of §1325(a)(3).
- B. Debtors have failed commence timely payments under the Plan.

7. All of the grounds for objection to confirmation are also grounds for dismissal of the case pursuant to 11 U.S.C. § 1307(c).

8. Movants give notice that they may, if necessary, call Edwin A. Kanis and Nancy L. Kanis, to testify regarding the indebtedness.

9. A separate Memorandum of Facts and Law is being submitted with this objection.

10. THIS IS A COMMUNICATION FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THIS PURPOSE.

WHEREFORE, Edwin A. Kanis and Nancy L. Kanis move the Court for an order denying confirmation of Debtor's Chapter 13 Plan and for such other relief as may be just and equitable.

Dated: 10/21/04

/s/ Gregory J. Wald

Gregory J. Wald, Attorney for

Debtor

3601 Minnesota Drive, Suite 800

Edina, MN 55435

(952) 921-5802 ID 165244

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Chapter 13
Bankruptcy Case No. 03-33041

In Re:
Terrance Paul Chromey
Donna Mae Chromey

Debtor(s).

MEMORANDUM OF FACT AND LAW

Edwin A. Kanis and Nancy L. Kanis (“Movants”) submit this Memorandum of Fact and Law in support of their Objection to Confirmation of Chapter 13 Plan and Motion to Dismiss in the above-entitled matter.

FACTS

Movants hold an unsecured claim in the amount of \$11,245.35. The claim is for money paid by Movants to Debtors for the purchase of a vehicle. On July 20, 2002, Movants entered into a contract to purchase a 2000 Chrysler Concord automobile from Debtors for the amount of \$14,000.00. Movants paid Debtors \$100.00 down on July 20, 2002 and \$13,900.00 on July 24, 2002. Debtors delivered the vehicle, but not the title. Debtor Terrance Chromey stated that he was not delivering the title because he wanted to accompany Movants to the State offices to change title. Title was never delivered and could not be delivered because Wells Fargo Financial was first secured party of record with an unsatisfied loan. Debtors hired a lawyer and obtained judgment against Debtors for \$14,561.35. Debtors filed a Chapter 13 petition on April 28, 2003. That case has

been dismissed. Under the case at bar, unsecured creditors are likely to receive about 10% of the amount owed to them.

ARGUMENT

I. THE PLAN IS NOT PROPOSED IN GOOD FAITH

Pursuant to 11 U.S.C. §1325(a)(3), a Chapter 13 Plan must be proposed in good faith to be confirmed. The Court must consider the totality of the circumstances in determining whether a Chapter 13 Plan has been proposed in good faith. In re LeMaire, 898 F.2nd 1345 (8th Cir. 1990); In Re Estus, 695 F.2d 311 (8th Cir. 1982); Education Assistance Corp. v. Zellner, 827 F2d 1222 (8th Cir. 1987).

The Court should also take into account the fraudulent nature of the debt to Movants. Debtors did not inform Movants that the 2000 Chrysler Concord was financed and that the title could not be delivered. Debtors did not use the funds that were paid to them for the vehicle to satisfy the lien in favor of Wells Fargo Financial. They bilked Movants of their money.

The plan is also not proposed in good faith because Debtors are not paying all of their disposable income to the trustee for the first 36 months of the plan. Debtor's expenses scheduled living expenses are greater than necessary and Debtors can afford a larger payment toward their debts. Living expenses should be adjusted as follows:

<u>Category</u>	<u>Scheduled Amount</u>	<u>Reasonable Amount</u>
Heat and electric	\$265	\$150
Telephone	\$95	\$35
Clothing	\$126	\$100
Laundry	\$80	\$40

Recreation & Entertainment	\$100	\$60
Auto insurance	\$467	\$120
Personal care/supplies/ Toiletries	\$175	\$135
Work related	\$75	0
Publications	\$30	0

Debtors' expenses are overstated by \$763.00 per month. Debtors' disposable income is \$1,243.00.

II. DEBTORS HAVE FAILED TO COMMENCE TIMELY PLAN PAYMENTS

On information from the trustee's office, Debtors made their first payment to the trustee in October 2004 in the amount of \$450.00. Since the case was filed on August 23, 2004, the first payment was made late and Debtors are running a month behind in their payments to the trustee.

11 U.S.C. § 1326(a)(1) provides that: "...the debtor shall commence making payments proposed by a plan within 30 days after the plan is filed." 11 U.S.C. § 1307(c) provides that the court may dismiss or convert the case for, "failure to commence making timely payments under section 1321 of this title." Section 1321 simply requires the filing of a plan. Debtors have failed to commence timely payments under the plan, therefore the case may be dismissed or converted to Chapter 7.

Dated: 10/21/04

/e/ Gregory J. Wald
 Gregory J. Wald, Attorney for
 Debtor
 3601 Minnesota Drive, Suite 800
 Edina, MN 55435
 (952) 921-5802 ID 165244

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Chapter 13
Bankruptcy Case No. 04-34927 - GFK

In Re:
Terrance Paul Chromey
Donna Mae Chromey

Debtor(s).

ORDER

At Minneapolis, Minnesota, this _____ day of _____, 2004.

This matter came before the Court for hearing on Confirmation of the debtors' Plan.

Edwin A. Kanis and Nancy L. Kanis filed an objection to confirmation and requested an Order denying confirmation and for an Order dismissing this case. Gregory J. Wald appeared on behalf of Edwin A. Kanis and Nancy L. Kanis. Other appearances were noted on the record.

It appears to the satisfaction of the Court that the debtor's Plan is not confirmable.

IT IS THEREFORE ORDERED:

1. Confirmation is denied
2. The case is dismissed.

GREGORY F. KISHEL
United States Bankruptcy Judge

In Re: Terrance and Donna Chromey

**U. S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

Debtor(s) Case Number BKY: 04-34927

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

I, Julie Nistler, of the office of Gregory J. Wald, attorney licensed to practice law in this court, with office address of 3601 Minnesota Drive, Suite 800, Edina, MN 55435, declares that on **October 21, 2004**, I served the Notice of Hearing and Objection to Confirmation of Chapter 13 Plan and Motion to Dismiss upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Edina, Minnesota addressed to each of them as follows:

Jasmine Z. Keller, Trustee
310 Plymouth Building
12 South 6th Street
Minneapolis, MN 55402

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Robert J. Hoglund
PO Box 130938
Roseville, MN 55113

Steve C. Opheim, Esq.
Attorney for Movant
101 East Fifth Street, Suite 2602
St. Paul, MN 55101

And I declare, under penalty of perjury, that the foregoing
is true and correct.

Executed: 10-21-04

Signed: Julie Nistler
